

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Rockville, Maryland 20850
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(240) 777-6600

Case No. A-6525

PETITION OF JEROME H. PARMET

OPINION OF THE BOARD
(Hearing Held: July 19, 2017)
(Effective Date of Opinion: July 26, 2017)

Case No. A-6525 is an application by Jerome H. Parmet (the "Petitioner") for a variance from the requirement in Section 59-4.4.9.B.2.a of the Zoning Ordinance that accessory structures be located behind the rear building line of the principal building. The Petitioner wishes to locate a shed on his property forward of the rear building line.

The Board of Appeals held a hearing on the application on July 19, 2017. Mr. Parmet, who owns the subject property, appeared pro se at the hearing with his wife, Lois Parmet.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 7, Block 5, Hammond Woods Subdivision, located at 11534 Highview Avenue, Silver Spring, Maryland, 20902, in the R-60 Zone.
2. The subject property is described in the Justification Statement as "an off set, 5 sided, irregular pentagon," a description borne out by the Site Plan. See Exhibits 3 and 4(a). The rear yard is described as "disproportionately hilly" with a six (6) foot rise and a small, dilapidated shed at the peak. The Justification Statement notes that there are "steep stone steps and [a] path cut into the hill for the purpose of accessing the hillside and its peak," and further notes that the shed at the peak "is useless to Petitioners because it is totally inaccessible for a 79 year old woman ... and an 81 year old man ... [who] are physically incapable of accessing that hill for stored items or heavy equipment." See Exhibit 3.

3. The Justification Statement states that the "topography makes it impossible to build a shed anywhere other than the proposed North corner because there is no other relatively level land available, and even that will require a small amount of excavation. See Exhibit 3.
4. While the majority of the proposed shed will be located in the Petitioner's rear yard, in an area permitted by the Zoning Ordinance, part of this proposed structure will be located in the Petitioner's side yard. See Exhibit 3.
5. The Justification Statement indicates that in the relevant development, "most of the homes (even those with basements) have sheds for additional storage, some of which are visible from the street because of the location on their lots." See Exhibit 3. The Zoning Vicinity Map confirms that a number of properties in the immediate area have accessory structures. See Exhibit 8.
6. The record contains several letters of support from the Petitioner's neighbors, including from the owners of the properties that would arguably be the most affected by the proposed shed, at 11536 and 11538 Highview Avenue. See Exhibit 7.
7. Mr. Parmet testified that his home is a one-story home, with no attic and no basement, and therefore no storage. He testified that his rear yard is encumbered by a significant slope, such that it is virtually unusable for the purpose of locating the proposed shed except in the requested location. He testified that the slope makes the existing four foot by ten foot shed, which is located at the top of the hill in the rear yard, inaccessible for persons of his age. He testified that he had investigated the feasibility of removing earth/regrading the property, but that that would be prohibitively expensive. Mr. Parmet testified that the location proposed for the new shed is partially in the rear yard and partially in the side yard, and is adjacent to his neighbor's fence. He testified that all of the neighbors on his cul-de-sac support the proposed construction, and that from the street, the shed will not be visible because the area is wooded. He further testified that most of his neighbors have sheds.
8. Mrs. Parmet testified that the subject property is oddly shaped and strange. She testified that the proposed shed would be partially located in the rear yard, and that if the house been sited 30 degrees to the right, the proposed shed would have been wholly in the rear yard. Mrs. Parmet testified that the proposed location is the only level site on the property and is 75 feet from the street. She testified that digging into the hill in the rear yard to create a level area where the shed could be located would not only be expensive, but would also be ecologically unsound. Mrs. Parmet testified that because of its location at the top of the hill, the existing shed is inaccessible for elderly people. Finally, she testified that the shed would be invisible from the street and would not disturb anyone if located in the proposed location.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property has a steeply sloped rear yard which constrains the access to and placement of accessory structures such as sheds on the property. The Board further finds that relative to a rectilinear property, the shape of this property and the angled placement of this house on the property limits usable space in the rear yard and increases usable space in the side yard. See Exhibits 3 and 4(a). The Board finds that these conditions constitute unusual or extraordinary circumstances.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioner and his wife only recently purchased this property, and there is no evidence in the record to suggest that he created the topography in his rear yard or the shape of the lot.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the slope of the property's rear yard severely limits the ability of the Petitioner to locate an accessory structure behind the rear building line of the principal structure (house), creating a practical difficulty for the Petitioner. The Board further finds that the five-sided shape of the Petitioner's property serves to limit the size of the rear yard, and as a result, the available space for the placement of an accessory structure. The Board finds that the requested variance, to allow the proposed accessory structure to be located in front of the rear building line, as shown on Exhibits 4(a) and (b), is the minimum necessary to overcome the practical difficulties imposed by compliance with the locational restrictions of the Zoning Ordinance.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the construction of this shed continues the residential use of the home, and is consistent with the goals of the Kensington Wheaton Master Plan which seek, among other things, "to maintain the well-established low- to medium-density residential character which prevails over most of the planning area."

5. Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

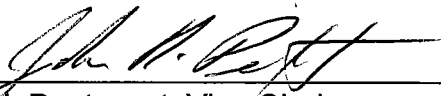
The Board finds that the record contains several letters of support from neighbors, including letters from the owners of the properties that would be most affected by construction of the proposed shed. The Board further finds that per the Justification Statement, in the relevant development, "most of the homes (even those with basements) have sheds for additional storage, some of which are visible from the street because of the location on their lots." Thus the Board finds that allowing the construction of a shed on this property, in the location proposed, will not infringe on the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance to allow an accessory structure/shed to be located in front of the rear building line is **granted**, subject to the following condition:

1. Petitioner shall be bound by his testimony and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.
2. Construction must be completed according to plans entered in the record at Exhibit Nos. 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by Edwin S. Rosado, with John H. Pentecost, Vice Chair, and Bruce Goldensohn in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of July, 2017.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.